

1 LATHAM & WATKINS LLP  
2 Patrick E. Gibbs, Bar No. 183174  
3 *patrick.gibbs@lw.com*  
4 Chris W. Johnstone, Bar No. 242152  
5 *chris.johnstone@lw.com*  
6 140 Scott Drive  
7 Menlo Park, California 94025  
8 Telephone: +1.650.328.4600  
9 Facsimile: +1.650.463.2600

10 LATHAM & WATKINS LLP  
11 Michele D. Johnson, Bar No. 198298  
12 *michele.johnson@lw.com*  
13 Carolyn A. Dawes, Bar No. 250747  
14 *carolyn.dawes@lw.com*  
15 650 Town Center Drive, 20th Floor  
16 Costa Mesa, California 92626-1925  
17 Telephone: +1.714.540.1235  
18 Facsimile: +1.714.755.8290

19 Attorneys for Defendants STEC, Inc.,  
20 Manouch Moshayedi, Mark Moshayedi and  
21 Raymond D. Cook

22  
23 UNITED STATES DISTRICT COURT  
24  
25 CENTRAL DISTRICT OF CALIFORNIA  
26  
27 SOUTHERN DIVISION  
28

29 IN RE STEC, INC. SECURITIES  
30 LITIGATION

31 This Document Relates To:  
32  
33 ALL ACTIONS

34 Lead Case No. 8:09-cv-01304-JVS (MLG)

35 DEFENDANTS' REQUEST FOR  
36 JUDICIAL NOTICE IN SUPPORT OF  
37 MOTION TO DISMISS

38  
39 Judge: Hon. James V. Selna  
40 Court: 10C  
41 Date: July 12, 2010  
42 Time: 1:30 p.m.  
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1 **TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF  
2 RECORD:**

3 Pursuant to Federal Rule of Evidence 201(b)(2), Defendants STEC, Inc.  
4 (“STEC”), Manouch Moshayedi, Mark Moshayedi, and Raymond D. Cook  
5 (collectively, “Defendants”) respectfully request that the Court take judicial notice  
6 of the following documents in support of their Motion to Dismiss the Consolidated  
7 Class Action Complaint (“Complaint”). The documents are attached to the  
8 Declaration of Michele D. Johnson (“Johnson Declaration”) and include Exhibits  
9 A through DD.

10 <b>EXHIBIT</b>	11 <b>DESCRIPTION</b>	12 <b>PAGE</b>
13 A	14 2009 Form 10-K: Excerpts from STEC’s Form 10-K for 15 fiscal year ending December 31, 2009, filed with the SEC 16 on February 23, 2010	17 6
18 B	19 2Q09 Earnings Call: Excerpts from STEC’s August 3, 20 2009 Earnings Call Transcript	21 15
22 C	23 1Q09 Form 10-Q: Excerpts from STEC’s Form 10-Q for 24 period ending March 31, 2009, filed with the SEC on May 11, 2009	25 20
26 D	27 2Q09 Form 10-Q: Excerpts from STEC’s Form 10-Q for 28 period ending June 30, 2009, filed with the SEC on August 3, 2009	29 26
30 E	31 3Q09 Form 10-Q: Excerpts from STEC’s Form 10-Q for 32 period ending September 30, 2009, filed with the SEC on 33 November 3, 2009	34 34
35 F	36 Historical Stock Prices: STEC’s historical stock prices 37 from August 1, 2009 to October 31, 2009, as published by 38 Yahoo! Finance	39 40
40 G	41 2008 Form 10-K: Excerpts from STEC’s Form 10-K for 42 fiscal year ending December 31, 2008, filed with the SEC 43 on March 12, 2009	44 43
45 H	46 3Q08 Earnings Release: Excerpts from STEC’s Form 8- 47 K, filed with the SEC on November 10, 2008, including 48 STEC’s November 10, 2008 Press Release	49 51
50 I	51 4Q08 Earnings Release: Excerpts from STEC’s Form 8- 52 K, filed with the SEC on March 12, 2009, including 53 STEC’s March 12, 2009 Press Release	54 65

EXHIBIT	DESCRIPTION	PAGE
J	1Q09 Earnings Release: Excerpts from STEC's Form 8-K, filed with the SEC on May 11, 2009, including STEC's May 11, 2009 Press Release	77
K	June 16, 2009 Press Release: Excerpts from STEC's Form 8-K, filed with the SEC on June 16, 2009, including STEC's June 16, 2009 Press Release	87
L	2Q09 Earnings Release: Excerpts from STEC's Form 8-K, filed with the SEC on August 3, 2009, including STEC's August 3, 2009 Press Release	90
M	3Q09 Earnings Release: Excerpts from STEC's Form 8-K, filed with the SEC on November 3, 2009, including STEC's November 3, 2009 Press Release	100
N	4Q09 Earnings Release: Excerpts from STEC's Form 8-K, filed with the SEC on February 23, 2010, including STEC's February 23, 2010 Press Release	111
O	3Q09 Earnings Call: Excerpts from STEC's November 3, 2009 Earnings Call Transcript	122
P	Analyst report: Stifel Nicolaus, " <i>Initiating Coverage with a Hold Rating: Balance Risk/Reward</i> ," dated March 25, 2009	157
Q	Analyst report: Thomas Weisel Partners, " <i>Strong Enterprise SSD Sales Drive Positive Preannouncement</i> ," dated June 16, 2009	159
R	Internet article containing Analyst report: Enterprise Storage Forum, " <i>Solid State Drive Developers Try to Catch STEC</i> ," dated July 2, 2009	160
S	SEC correspondence: Letter from Stephen Krikorian, Accounting Branch Chief, Division of Corporate Finance, SEC, to Manouch Moshayedi, Chief Executive Officer, STEC, dated August 28, 2009	162
T	SEC correspondence: Letter from Stephen Krikorian, Accounting Branch Chief, Division of Corporate Finance, SEC, to Manouch Moshayedi, Chief Executive Officer, STEC, dated October 20, 2009	168
U	Initial Public Offering Prospectus: Excerpts from STEC's Form 424B4, filed with the SEC on September 29, 2000	169
V	October 2003 Prospectus: Excerpts from STEC's Form 424B4, filed with the SEC on October 24, 2003	172

EXHIBIT	DESCRIPTION	PAGE
W	Schedule 13 G/A, filed with the SEC on February 14, 2003 (Mark Moshayedi)	175
X	Schedule 13 G/A, filed with the SEC on February 14, 2003 (Manouch Moshayedi)	185
Y	Schedule 13 G/A, filed with the SEC on February 17, 2004 (Mark Moshayedi)	197
Z	Schedule 13 G/A, filed with the SEC on February 17, 2004 (Manouch Moshayedi)	205
AA	May 29, 2009 Press Release, “ <i>STEC Executives Adopt Rule 10b5-1 Trading Plans</i> ”	213
BB	August 2009 Prospectus Supplement: Excerpts from STEC’s Form 424B3, filed with the SEC on August 7, 2009	214
CC	Analyst report: WedBush, “ <i>Checks Indicate Q3 Beat Likely in Cards; but Expect Changing Competitive Landscape to Pressure Shares Downward</i> ,” dated September 17, 2009	233
DD	4Q09 Earnings Call: Excerpts from STEC’s February 23, 2010 Earnings Call Transcript	241

1     **I. INTRODUCTION**

2         This is a securities class action lawsuit against STEC and three of its  
 3 officers, Manouch Moshayedi, Mark Moshayedi, and Raymond D. Cook.  
 4 Plaintiffs allege violations of Section 10(b) and 20(a) of the Securities Exchange  
 5 Act of 1934 based on alleged misrepresentations and omissions in STEC's press  
 6 releases and public filings with the SEC and in STEC's public conference calls  
 7 between June 16, 2009 and February 23, 2010 (the "Class Period"). Defendants  
 8 have filed a Motion to Dismiss the Complaint on the ground that it fails to plead  
 9 facts sufficient to state a claim under the Private Securities Litigation Reform Act  
 10 ("PSLRA") and Federal Rules of Civil Procedure Rules 8(a), 9(b), and 12(b)(6).

11         Defendants respectfully request that the Court take judicial notice of the  
 12 following items: (1) certain relevant excerpts of STEC's press releases filed on  
 13 SEC Form 8-K; (2) certain relevant excerpts of STEC's quarterly and annual SEC  
 14 Form 10-Q and SEC Form 10-K filings; (3) certain relevant excerpts of STEC's  
 15 September 29, 2000 and October 24, 2003 prospectuses and August 7, 2009  
 16 prospectus supplement filed on SEC Forms 424B4 and 424B3; (4) certain of  
 17 Manouch and Mark Moshayedi's statements of beneficial ownership filed on SEC  
 18 Form 13 G/A; (5) certain publicly available correspondence between the Division  
 19 of Corporate Finance of the SEC and STEC; (6) certain relevant excerpts of  
 20 STEC's quarterly earnings conference call transcripts; (7) certain analyst reports  
 21 and internet articles containing analyst reports cited in the Complaint and other  
 22 reports reflecting whether and when certain information was provided to the  
 23 market; and (8) STEC's historical stock prices from August 1, 2009 to October 31,  
 24 2009, as published by Yahoo! Finance. These materials are relevant to the alleged  
 25 falsity of the statements identified in the Complaint, and the "competing  
 26 inferences" and "non-culpable explanations" for the alleged misconduct. *Tellabs,*  
 27 *Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 314, 127 S. Ct. 2499 (2007).

28

1 Judicial notice of Exhibits A through DD is appropriate, and Defendants' Request  
 2 for Judicial Notice should be granted.

3 **II. DISCUSSION**

4 **A. Standard for Judicial Notice**

5 In ruling on motions to dismiss in securities cases, "courts must consider the  
 6 complaint in its entirety, as well as other sources courts ordinarily examine when  
 7 ruling on Rule 12(b)(6) motions to dismiss, in particular, documents incorporated  
 8 into the complaint by reference, and matters of which a court may take judicial  
 9 notice." *Tellabs*, 551 U.S. at 322 (2007). Judicial notice may be taken of any  
 10 adjudicative fact that is "capable of accurate and ready determination by resort to  
 11 sources whose accuracy cannot reasonably be questioned." Fed. R. Evid.  
 12 201(b)(2).

13 Courts routinely take judicial notice of documents that are publicly available  
 14 and referenced in the complaint, particularly SEC filings. *See, e.g., In re Silicon*  
*15 Graphics, Inc. Sec. Litig.*, 183 F.3d 970, 986 (9th Cir. 1999) (proper to consider  
 16 SEC filings under incorporation-by-reference doctrine); *Belodoff v. Netlist, Inc.*,  
 17 No. 07-00677, 2009 U.S. Dist. LEXIS 78309, at \*12-13 (C.D. Cal. Sept. 1, 2009)  
 18 (applying incorporation-by-reference doctrine and public records approach to take  
 19 judicial notice of various SEC filings); *Fecht v. Price Co.*, 70 F.3d 1078, 1080 n.1  
 20 (9th Cir. 1995) (full text of documents relied upon in complaint alleging securities  
 21 fraud may be considered on motion to dismiss for failure to state a claim).

22 A court may also take judicial notice of "'matters of public record' without  
 23 converting a motion to dismiss into a motion for summary judgment." *Lee v. City*  
*24 of Los Angeles*, 250 F.3d 668, 689 (9th Cir. 2001); *see also Branch v. Tunnell*, 14  
 25 F.3d 449, 454 (9th Cir. 1994) (documents whose contents are alleged in complaint  
 26 and whose authenticity are not questioned are properly considered in ruling on  
 27 motion to dismiss without converting it to motion for summary judgment),  
 28

1 *superseded by statute on other grounds, as stated in Abrego v. Dow Chem. Co.,*  
 2 443 F.3d 676, 681 (9th Cir. 2006).

3 The strong congressional policies in the PSLRA (15 U.S.C. § 78u-4)  
 4 underscore the need for courts to take judicial notice of readily ascertainable  
 5 corporate disclosures in considering motions to dismiss. The PSLRA was  
 6 prompted by “significant evidence of abuse in private securities lawsuits.”  
 7 H.R. Rep. No. 104-369, at 31 (1995), *reprinted in 1995 U.S.C.C.A.N. 730.*  
 8 Congress adopted reforms designed to weed out speculative securities suits *at the*  
 9 *pleading stage.* Accordingly, when investors claim “fraud” on the basis of alleged  
 10 omissions and misrepresentations in publicly available documents, courts must  
 11 take judicial notice of those documents. Otherwise, a plaintiff bringing a meritless  
 12 claim could easily overcome a motion to dismiss and gain the right to engage in  
 13 extensive discovery simply by selectively choosing portions of the defendant’s  
 14 public statements out of context. *See Parrino v. FHP, Inc.*, 146 F.3d 699, 705-06  
 15 (9th Cir. 1998) (plaintiff cannot survive motion to dismiss by omitting references  
 16 to documents upon which their claims were based), *superseded by statute on other*  
 17 *grounds, as stated in Abrego v. Dow Chem. Co.*, 443 F.3d 676, 681 (9th Cir. 2006);  
 18 *Trew v. International Game Fish Ass’n, Inc.*, 404 F. Supp. 2d 1173, 1176 n.2 (N.D.  
 19 Cal. 2005) (when complaint expressly refers to a document, court may consider  
 20 that document in motion to dismiss without converting it to motion for summary  
 21 judgment).

22 **B. The Court Should Take Judicial Notice of Exhibits A through DD**

23 **1. STEC’s Press Releases**

24 Defendants request that the Court take judicial notice of STEC’s press  
 25 releases filed on SEC Form 8-K (Exhibits H, I, J, K, L, M, N). Defendants also  
 26 request judicial notice of a publicly available STEC press release (Exhibit AA). In  
 27 the Complaint, Plaintiffs quote extensively, but selectively, from each of these  
 28

1 press releases. Compl. ¶¶ 54, 56, 58, 77, 79, 80, 85, 86, 90, 92, 98, 119, 122, 138,  
 2 164. Under the incorporation-by-reference doctrine, a district court, when  
 3 adjudicating a motion to dismiss, may consider documents outside the complaint  
 4 “[i]f a plaintiff fails to attach to the complaint the documents on which it is based. .  
 5 . . .” *In re Pacific Gateway Exch., Inc. Sec. Litig.*, 169 F. Supp. 2d 1160, 1164  
 6 (N.D. Cal. 2001) (citation omitted); *Tellabs*, 551 U.S. at 322. Moreover, judicial  
 7 notice of documents filed with the SEC is appropriate under Federal Rule of  
 8 Evidence 201(b)(2). *Kramer v. Time Warner, Inc.*, 937 F.2d 767, 774 (2nd Cir.  
 9 1991). It is therefore appropriate for the Court to take judicial notice of Exhibits  
 10 Exhibits H, I, J, K, L, M, N, and AA.

## 11                   2.     **STEC’s Form 10-K and Form 10-Q Filings**

12                   Defendants request that the Court take judicial notice of certain of STEC’s  
 13 quarterly and annual SEC Form 10-Q and SEC Form 10-K filings (Exhibits A, C,  
 14 D, E, G). STEC offers excerpts, rather than complete filings, to avoid burdening  
 15 the Court with unrelated discussion and information, and to focus attention on the  
 16 relevant portions of the filings that concern the matters alleged in the Complaint.  
 17 The complete filings are readily available on the internet and can be accessed  
 18 directly from the SEC’s website at <http://www.sec.gov>.

19                   In the Complaint, Plaintiffs reference and selectively quote from many of  
 20 STEC’s 10-Ks and 10-Qs. Compl. ¶¶ 90, 91, 92, 99, 113, 115, 182. It is well  
 21 established that in Section 10(b) cases, courts can and should take judicial notice of  
 22 the full text of the documents referenced in a complaint. *In re Stac Elec. Sec.*  
 23 *Litig.*, 89 F.3d 1399, 1405 (9th Cir. 1996) (full text of documents cited in  
 24 complaint alleging securities violations “may be considered in ruling on a Rule  
 25 12(b)(6) motion to dismiss”); *In re Infonet Serv. Corp. Sec. Litig.*, 310 F. Supp. 2d  
 26 1106, 1113 (C.D. Cal. 2003) (on motion to dismiss securities fraud claims “the  
 27 court may consider the full text of the relevant documents” cited by plaintiffs); *In*  
 28

1 *re Zoran Corp. Deriv. Litig.*, 511 F. Supp. 2d 986, 1001 (N.D. Cal. 2007)  
 2 (“Plaintiff cannot be allowed to exclude the rest of the Form 10K because he  
 3 wishes to pick and choose which statements should be considered”). Defendants  
 4 request judicial notice of the full text of the disclosures cited in the Complaint, as  
 5 well as additional STEC 10-Q and 10-K disclosures that are relevant to evaluating  
 6 the sufficiency of Plaintiffs’ allegations that investors were misled. *See Stac*, 89  
 7 F.3d at 1409-10 (holding information available to investors should be considered  
 8 when evaluating whether complaint pleads that defendant’s statements were false  
 9 or misleading). It is therefore appropriate for the Court to take judicial notice of  
 10 Exhibits A, C, D, E, and G.

### 11                   **3.      Prospectuses and Prospectus Supplement**

12                   Defendants request that the Court take judicial notice of certain excerpts of  
 13 STEC’s September 29, 2000 and October 24, 2003 prospectuses and August 7,  
 14 2009 prospectus supplement filed on SEC Forms 424B4 and 424B3 (Exhibits U,  
 15 V, BB). The contents of the August 7, 2009 Form 424B3 filing and October 24,  
 16 2003 Form 424B4 filing are specifically alleged in the Complaint. Compl. ¶¶ 72,  
 17 104, 105. Additionally, Plaintiffs implicitly rely upon the September 29, 2000  
 18 initial public offering documents in attempting to plead scienter. Compl. ¶¶ 7, 63,  
 19 69. STEC offers excerpts, rather than complete filings, for the sake of efficiency  
 20 as explained above. The complete filings are readily accessible at  
 21 <http://www.sec.gov>.

22                   It is proper for the Court to take judicial notice of STEC’s filings on Forms  
 23 424B4 and 424B3 for several reasons. First, as the authority set forth above makes  
 24 clear, it is proper for the Court to judicially notice these exhibits under the doctrine  
 25 of incorporation by reference. *See Pacific Gateway Exch.*, 169 F. Supp. 2d at  
 26 1164. Second, these filings are publicly available on the SEC’s website.  
 27 Moreover, courts in the Ninth Circuit have specifically held that a company’s  
 28

1 prospectus may be judicially noticed. *See, e.g., In re Stac*, 89 F.3d at 1405 n.4  
 2 (judicially noticing full text of prospectus, including portions not mentioned in  
 3 complaint, when ruling on motion to dismiss); *In re CellCyte Genetics Sec. Litig.*,  
 4 No. C08-0047, 2009 U.S. Dist. LEXIS 87828, at \*11-12 (W.D. Wash. Sept. 23,  
 5 2009) (judicially noticing defendants' prospectus filed with SEC); *Haney v. Pacific*  
 6 *Telesis Group*, No. CV 00-758, 2000 U.S. Dist. LEXIS 16218, at \*6 n.4 (C.D. Cal.  
 7 Sept. 19, 2000) (judicially noticing two prospectuses referenced in complaint).  
 8 Judicial notice of Exhibits V, W, and BB is therefore appropriate.

9 **4. Forms 13G/A**

10 Defendants request that the Court take judicial notice of certain statements of  
 11 Mark and Manouch Moshayedi's beneficial ownership filed on SEC Form 13 G/A  
 12 (Exhibits W, X, Y, Z). The Ninth Circuit has long held that judicial notice of  
 13 filings reflecting stock transactions by corporate officers and directors is  
 14 appropriate in ruling on motions to dismiss securities complaints where, as here,  
 15 Plaintiffs use publicly reported stock sales to attempt to allege an inference of  
 16 scienter. The Court may also consider on a motion to dismiss SEC filings that are  
 17 not explicitly referenced in the complaint, but upon which a plaintiff implicitly  
 18 relies for his stock sales allegations. *See Morgan v. AXT, Inc.*, No. C 04-4362,  
 19 2005 U.S. Dist. LEXIS 42346, at \*21-22 (N.D. Cal. Sept. 21, 2005) (taking  
 20 judicial notice of SEC Forms 4 even though not expressly referenced in  
 21 complaint). As the Ninth Circuit explained in *Silicon Graphics*, a plaintiff, having  
 22 raised questions about these officers' stock sales, and having based allegations of  
 23 improper trading on publicly available trading records, "can hardly complain when  
 24 [the officers] refer to the same information" in challenging the adequacy of the  
 25 allegations. *In re Silicon Graphics*, 183 F.3d at 986.

26 The Forms 13 G/A reflect Manouch and Mark Moshayedi's beneficial stock  
 27 ownership and are readily available on the SEC's website at <http://www.sec.gov>.  
 28

1 The existence and contents of these Forms are “capable of accurate and ready  
 2 determination by resort to sources whose accuracy cannot reasonably be  
 3 questioned.” Fed. R. Evid. 201(b). Furthermore, courts have taken judicial notice  
 4 of SEC filings, including Forms 13 G. *See Shurkin v. Golden State Vintners, Inc.*,  
 5 471 F. Supp. 2d 998, 1011 (N.D. Cal. 2006) (judicially noticing Form 13G). In  
 6 sum, where, as here, stock sales are an integral part of the scienter allegations in  
 7 the Complaint, judicial notice of the Forms 13G/A is not only proper, but critical to  
 8 conducting the comparative analysis mandated by *Tellabs*.

9 **5. The SEC Correspondence**

10 Defendants request that the Court take judicial notice of certain publicly  
 11 available correspondence between the Division of Corporate Finance of the SEC  
 12 and STEC (Exhibits S and T). In the Complaint, Plaintiffs reference and  
 13 selectively quote from this correspondence in support of Plaintiffs’ allegation that  
 14 STEC issued false and misleading statements concerning STEC’s customer base  
 15 and growth, including “concealing” agreements with STEC’s largest customer,  
 16 EMC. Compl. ¶¶ 34, 35, 95, 96. As explained above, it is appropriate for the  
 17 Court to judicially notice these exhibits under the doctrine of incorporation by  
 18 reference. *See Pacific Gateway Exch.*, 169 F. Supp. 2d at 1164; *Tellabs*, 551 U.S.  
 19 at 322. Further, the SEC comment letters are readily available on the SEC’s  
 20 website at <http://sec.gov/Archives/edgar/data/1102741>. *See also Batwin v.*  
 21 *OCCAM Networks, Inc.*, No. CV 07-2750, 2008 U.S. Dist. LEXIS 52365, at \*5 n.3  
 22 (C.D. Cal. July 1, 2008) (judicially noticing SEC letter, authenticity of which was  
 23 not challenged, indicating that SEC would not take enforcement action). Because  
 24 the Complaint incorporates these letters by reference, and because they are public  
 25 documents capable of authentication, the Court is entitled to take judicial notice of  
 26 Exhibits S and T.

27

28

## 6. STEC's Earnings Conference Call Transcripts

2 Defendants request that the Court take judicial notice of certain relevant  
3 excerpts of STEC's quarterly earnings conference call transcripts dated August 3,  
4 2009, November 3, 2009, and February 23, 2010 (Exhibits B, O, DD). In the  
5 Complaint, Plaintiffs reference and selectively quote from these earnings  
6 conference call transcripts. Compl. ¶¶ 32, 33, 59, 93, 101, 102, 120, 123, 131, 139,  
7 141, 142, 143, 149, 150, 160, 166, 167, 170, 192. It is proper for the Court to take  
8 judicial notice of STEC's quarterly conference calls regarding its earnings for two  
9 reasons. First, as set forth above, it is proper for the Court to judicially notice these  
10 exhibits under the doctrine of incorporation by reference. *See Pacific Gateway*  
11 *Exch.*, 169 F. Supp. 2d at 1164. Second, courts routinely take judicial notice of  
12 transcripts of earnings conference calls. *See, e.g., In re Century Aluminum Co.*  
13 *Sec. Litig.*, No. C 09-1001, 2010 U.S. Dist. LEXIS 41062, at \*43 (N.D. Cal. Apr.  
14 27, 2010) (judicially noticing transcripts of conference calls with analysts); *In re*  
15 *Rackable Sys.*, No. C 09-0222, 2010 U.S. Dist. LEXIS 2663, at \*10 (N.D. Cal. Jan.  
16 13, 2010) (same); *SEC v. Mozilo*, No. CV 09-3994, 2009 U.S. Dist. LEXIS 10468,  
17 at \*20 n.2 (C.D. Cal. Nov. 3, 2009) (same). It is therefore appropriate for the Court  
18 to take judicial notice of Exhibits B, O, and DD.

## 7. Analyst Reports

20 Defendants request that the Court take judicial notice of certain analyst  
21 reports and a web article containing an analyst report on STEC, most of which are  
22 relied on in the Complaint (Exhibits P, Q, R, CC). As Plaintiffs acknowledge,  
23 throughout the Class Period, “STEC was followed by several securities analysts  
24 employed by major brokerage firms . . . Each of these reports was publicly  
25 available and entered the public marketplace.” Compl. ¶ 201(d). Plaintiffs  
26 reference and selectively quote from certain analyst reports and from a web article  
27 containing an analyst report (Exhibit R). *Id.* ¶¶ 36, 128, 134, 137, 140, 153, 154,

1 155, 156, 157, 158, 159, 160, 174, 175, 176, 177, 178, 179. It is proper for the  
 2 Court to take judicial notice of the analyst reports and the internet article  
 3 containing an analyst report explicitly cited in the Complaint under the doctrine of  
 4 incorporation by reference. *See Pacific Gateway Exch.*, 169 F. Supp. 2d at 1164;  
 5 *Brodsky v. Yahoo! Inc.*, 630 F. Supp. 2d 1104, 1111-12 (N.D. Cal. 2009) (granting  
 6 judicial notice of analyst reports referenced in complaint); *New York State  
 7 Teachers' Ret. Sys. v. Fremont Gen. Corp.*, No. 2:07-CV-5756, 2009 U.S. Dist.  
 8 LEXIS 94241, \*2-3 (C.D. Cal. Sept. 25, 2009) (same).

9 It is also appropriate for the court to consider in a motion to dismiss certain  
 10 other analyst reports submitted to establish “whether and when certain information  
 11 was provided to the market.” *See In re Infonet Serv. Corp.*, 310 F. Supp. 2d at  
 12 1116 n.10; *In re Wet Seal, Inc. Sec. Litig.*, 518 F. Supp. 2d 1148, 1157-60 (C.D.  
 13 Cal. 2007). It is therefore appropriate for the Court to take judicial notice of  
 14 Exhibits P, Q, R, and CC.

15 **8. STEC's Historical Stock Prices**

16 Defendants request that the Court take judicial notice of STEC's historical  
 17 stock prices between August 1, 2009 and October 31, 2009 as published by Yahoo!  
 18 Finance (Exhibit F). In the Complaint, Plaintiffs reference and selectively quote  
 19 STEC's stock prices. Compl. ¶¶ 8, 55, 57, 58, 60, 75, 78, 134, 151, 172. It is  
 20 proper for the Court to take judicial notice of STEC's historical stock prices for  
 21 two reasons. First, as the authority set forth above makes clear, it is proper for the  
 22 Court to judicially notice these exhibits under the doctrine of incorporation by  
 23 reference. *See Pacific Gateway Exchange*, 169 F. Supp. 2d at 1164. Second,  
 24 courts routinely take judicial notice of historical stock prices. *See, e.g., Metzler  
 25 Inv. GMBH v. Corinthian Colleges, Inc.*, 540 F.3d 1049, 1064 n.7 (9th Cir. 2008)  
 26 (judicially noticing defendants' reported stock price history); *City of Westland  
 27 Police & Fire Ret. Sys. v. Sonic Solutions*, No. C 07-0511, 2009 U.S. Dist. LEXIS  
 28

1 33339, at \*9-10 (N.D. Cal. Apr. 6, 2009) (judicially noticing historical stock prices  
 2 because stock prices “are subject to accurate and ready determination by resort to  
 3 sources whose accuracy cannot reasonably be questioned”); *In re Finisar Corp.*  
 4 *Derivative Litig.*, No. C 06-07660, 2009 U.S. Dist. LEXIS 94002, at \*16, n.4  
 5 (N.D. Cal. Sept. 22, 2009) (judicially noticing defendants’ closing stock prices for  
 6 the period of the alleged backdating); *Bank of Stockton v. Verizon Commc’n, Inc.*,  
 7 No. C 09-15909, 2010 U.S. App. LEXIS 7662, at \*2 n.1 (9th Cal.Cir. Apr. 14,  
 8 2010) (judicially noticing publicly reported stock prices); *Burritt v. NutraCea*, No.  
 9 CV 09-00406, 2010 U.S. Dist. LEXIS 17544, at \*9 (D. Ariz. Feb. 24, 2010)  
 10 (same); *SEC v. Mozilo*, No. CV 09-3394, 2009 U.S. Dist. LEXIS 104689, at \*20  
 11 n.2 (C.D. Cal. Nov. 3, 2009) (same). It is therefore appropriate for the Court to  
 12 take judicial notice of Exhibit F.

13 **III. CONCLUSION**

14 For the foregoing reasons, Defendants respectfully request that the Court  
 15 take judicial notice of Exhibits A through DD, attached to the Johnson Declaration.

16 Dated: May 12, 2010

17 Respectfully submitted,

18 LATHAM & WATKINS LLP

19  
 20 By /s/  
 21 Michele D. Johnson  
 22 Attorneys for Defendants STEC,  
 23 Inc., Manouch Moshayedi, Mark  
 24 Moshayedi, and Raymond D. Cook